

Internal Revenue Service

Number: **201050017**

Release Date: 12/17/2010

Index Number: 103.00-00, 103.02-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

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CC:FIP:B05

PLR-120169-10

Date:

August 25, 2010

Legend:

X =

Y =

Act =

Association =

Certain Medical
Services =

Department =

Entities =

Fund =

Plan =

State =

Dear

This letter is in response to your request for a ruling that the Association is a political subdivision of State.

Facts and Representations:

Association was created by an act of State's legislature for the purpose of administering the Plan. The Plan was established under State law to provide compensation, irrespective of fault, for Certain Medical Services within State.

Association is comprised of X directors who are appointed by State's chief financial officer. When vacancies occur, recommendations are provided to State's chief financial officer by the Entities but the chief financial officer is not bound by any recommendations. Association is operated pursuant to a plan of operation approved by the Department. When the Association was formed, State's legislature funded the Plan with Y million from the Fund.

The Plan's revenues are derived primarily from an assessment imposed under State law on most State physicians and an assessment levied on certain hospitals per baby born in the hospital. Under State law, the Department must authorize any increased assessments. Association may enforce collection of assessments required to be paid to the Plan. The assessments imposed for the Plan constitute a "tax" under State law. Funds held by the Association on behalf of the Plan are considered to be funds of State and Association may only invest Plan funds in certain specified investments and securities as set forth under the Act. Under State law, Association has sovereign immunity which is waived only to the extent necessary to pay claims under the Plan.

Law and Analysis:

Section 1.103-1(b) of the Income Tax Regulations provides that the term "political subdivision" denotes any division of any state or local governmental unit which is a municipal corporation or which has been delegated the right to exercise part of the sovereign power of the unit. As thus defined, a political subdivision of any state or local governmental unit may or may not, for purposes of this section, include special assessment districts so created, such as road, water, sewer, gas, light, reclamation, drainage, irrigation, levee, school, harbor, port improvement, and similar districts and divisions of these units. Rev. Rul. 78-276, 1978-2 C.B. 256, states that the term "political subdivision" has been defined consistently for all Federal income tax purposes

as denoting either (1) a division of the State or local government that is a municipal corporation, or (2) a division of such State or local government that has been delegated the right to exercise sovereign power.

We conclude that the Association has not been delegated the right to exercise a sovereign power. The three generally acknowledged sovereign powers are the power to tax, the power of eminent domain, and the police power. See *Commissioner v. Estate of Alexander J. Shamberg*, 3 T.C. 131 (1944), *acq.*, 1945 C.B. 6, *aff'd*, 144 F.2d 998 (2d Cir. 1944), *cert. denied*, 323 U.S. 792 (1945). Although we are not concluding that the assessments are a tax for Federal tax purposes, if they are a tax, they are not levied by the Association. Rather, the assessments are set by State law, and the Department must authorize any increase. Association simply has the power to collect the assessments, which is not the exercise of a sovereign power. Association has no other sovereign power.

Nevertheless, we conclude that the Association is a division of State. In determining whether Association is a division of State, consideration must be given to factors that indicate that it will be a governmental rather than a private entity. These factors include, but are not limited to, its public purpose and attributes, whether its assets or income will inure to private interests and the degree of its control by State. See *generally* Rev. Rul. 83-131, 1983-2 C.B. 184. Here, Association was established by State's legislature for a public purpose, and the Plan which it administers was funded by State with an initial appropriation of Y million. Funds held by the Association on behalf of the Plan are funds of State under State law. Association has been granted sovereign immunity under State law. Association's board of directors is appointed by State's chief financial officer. Moreover, Association is operated in accordance with a plan of operations that was approved by the Department. Cumulatively, the foregoing factors indicate that Association is a division of State.

Conclusion:

Based solely on the representations made, we conclude that the Association is a division of State but is not a political subdivision. As a division of State, Association is not required to file Federal income tax returns or pay Federal income tax on its income.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for ruling; however such material is subject to verification on examination.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Internal Revenue Code provides that it may not be used or cited as precedent.

Sincerely,

Associate Chief Counsel
(Financial Institutions & Products)

By: _____
Timothy L. Jones
Senior Counsel
Branch 5

cc: